

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

*Toll Free Service Access Codes*

CC Docket No. 95-155

WT Docket No. 08-7

**REPLY OF SOMOS, INC. IN SUPPORT OF ITS PETITION  
FOR A DECLARATORY RULING REGARDING REGISTRATION OF TEXT-  
ENABLED TOLL-FREE NUMBERS**

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## INTRODUCTION

Somos, Inc., the Toll-Free Neutral Administrator, has petitioned the Commission for a declaratory ruling that a messaging services provider may not text-enable a Toll-Free number without (1) seeking authorization from the Responsible Organization (“Resp Org”) with assignment and routing authority for that Toll-Free number, and (2) ensuring that the number is properly registered with the Texting and Smart Services (“TSS”) Registry administered by Somos. The ruling is necessary to ensure that Toll-Free subscribers maintain control over their own numbers, to protect consumers from the possibility of deceptive use of Toll-Free numbers, and to ensure that Toll-Free numbers are administered in a competitively neutral manner, as Congress directed. The comments submitted by various industry members – Resp Orgs, messaging providers, and others – reinforce the case for Commission action to address this existing threat to the integrity of the Toll-Free numbering system. By contrast, none of the objections raised by parties who oppose the petition provides any basis, procedural or substantive, for delaying Commission action.

*First*, a declaratory ruling is an appropriate procedural mechanism for granting the relief Somos seeks. For the reasons that Somos has stated, the current regulatory framework – which designates Resp Orgs as the sole entities with responsibility for managing and administering Toll-Free numbers – requires that Toll-Free numbers be text-enabled only with the authorization of the Resp Org. Likewise, maintaining the integrity of Toll-Free number administration requires that when Toll-Free numbers are text-enabled, their registration status be recorded in a way that is integrated with the definitive SMS/800 database, a function that the TSS Registry (and only the TSS Registry) provides. Granting the Petition would resolve substantial uncertainty over the rules governing the text-to-Toll-Free market. A notice-and-comment rulemaking is not required because the declaration that Somos seeks would not alter any existing rule but would instead

clarify the scope of existing regulations. Commenters' effort to portray the Petition as seeking common-carrier regulation of text messaging services is simply incorrect. The ruling Somos seeks is based on the Commission's authority over numbering, and does not address the regulatory status of text-messaging at all.

Granting the Petition would ensure that subscribers are in control of their Toll-Free numbers, a goal that all industry participants say they support. As many commenters have attested, the text-enablement of Toll-Free numbers without the knowledge of the Resp Org charged with administering the number, or even without the knowledge of the Toll-Free subscriber, is a real problem. The Commission should act now to clarify that Resp Orgs must authorize text-enablement, before the problem grows worse. Just as important, requiring Resp Org authorization would protect consumers from potential fraud and abuse, which is a particular concern where two trusted technologies – text messaging and Toll-Free numbers – intersect. Use of the TSS Registry not only provides an efficient mechanism for obtaining Resp Org authorization, but it also ensures that only assigned Toll-Free numbers are text enabled, and that registration information is maintained in a definitive database. By providing a neutral, non-discriminatory source of message-routing reference information, the TSS Registry has the additional benefit of enhancing competition among messaging providers.

There is no merit to the argument that Somos or Resp Orgs will unfairly benefit if the Commission grants the Petition. Somos administers the TSS Registry, as an ancillary system to the SMS/800 database, on a neutral and not-for-profit basis. Charges for use of the TSS Registry will be added to the SMS/800 Functions Tariff and will be limited to the costs of providing the service. And Resp Orgs, which are already bound by the Commission's rules, the SMS/800 Tariff,

and industry guidelines, would not be permitted to gain any unfair advantage from their role in authorizing text-enablement of Toll-Free numbers.

## **I. A DECLARATORY RULING IS AN APPROPRIATE VEHICLE FOR RESOLVING THESE ISSUES**

A declaratory ruling is appropriate here because granting Somos's petition would resolve uncertainty as to the scope and meaning of rules governing Toll-Free number administration. Whether to issue a declaratory order is a decision in the "sound discretion" of the Commission.<sup>1</sup> A declaratory ruling may be appropriate either to "terminate a controversy" or to "remove uncertainty."<sup>2</sup> The declaratory ruling that Somos seeks would remove substantial uncertainty over the application of the Commission's regulations and orders and the SMS/800 Tariff to changing technology.<sup>3</sup>

The Commission has long held that "§§ 1 and 251(e)(1) of Title II of the Communications Act, as amended by the Telecommunications Act of 1996, require the Commission to ensure the efficient, fair, and orderly allocation of toll free numbers."<sup>4</sup> To effectuate that purpose, the Commission has shaped the current system for allocating Toll-Free numbers by acting on petitions for declaratory orders as well as through rulemaking.<sup>5</sup> Under the Commission's rules and the

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<sup>1</sup> 5 U.S.C. § 554(e).

<sup>2</sup> *Id.*; *see also* 47 C.F.R. § 1.2 (same).

<sup>3</sup> *See* Somos, Inc. F.C.C. Tariff No. 1 (issued Nov. 3, 2015) ("SMS/800 Tariff"), *available at* <https://portal.somos.com/ResoPDF/PublicDocuments/SMS800FunctionsTariff.pdf>.

<sup>4</sup> Second Report and Order and Further Notice of Proposed Rulemaking ("Second Report and Order"), *Toll Free Service Access Codes*, 12 FCC Rcd 11162, 11164, ¶ 2 (1997).

<sup>5</sup> *See, e.g.*, Order, *Provision of Access for 800 Service*, 8 FCC Rcd 1423 (1993) (granting petition for declaratory ruling); Fifth Report and Order, *Toll Free Service Access Codes*, 15 FCC Rcd 11939 (2000) (ruling in part on petition for declaratory ruling). *Cf.* Declaratory Ruling and Order, *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd 7961 (2015) (clarifying through a declaratory ruling how the Telephone Consumer Protection Act of 1991 applies to text messaging and text-messaging "apps").

SMS/800 Tariff, Somos neutrally administers a single, central registry and Resp Orgs “manage and administer the appropriate records” in that registry.<sup>6</sup> Resp Orgs are required to use the SMS/800 database in accordance with the Commission’s rules and the SMS/800 Tariff.<sup>7</sup> Under the Tariff, Toll-Free numbers are to be “obtained by Resp Orgs for subscribers,” and Resp Orgs are to ensure that “[a]n individual toll-free number [is] assigned to only one subscriber” and are “responsible for the overall coordination of maintenance and testing of the end-to-end toll-free service.”<sup>8</sup> The Petition seeks an interpretation of these rules as they apply to text-enabled Toll-Free numbers. In essence, the Petition asks the Commission to clarify to what extent the Resp Orgs’ established responsibilities apply with respect to text enablement.

A declaratory order may appropriately “represent[] a new policy for a new situation.”<sup>9</sup> Since it is technically possible for Toll-Free numbers to be text-enabled without the knowledge of Resp Orgs, the Commission should take action to ensure that Resp Orgs can continue to carry out their responsibility for assignment and management of Toll-Free numbers. The declaratory ruling Somos seeks would allow the Resp Orgs to continue to play their current role in the regulatory scheme and would resolve uncertainty over the extent of the various parties’ legal obligations with respect to this new technology, including Somos’s obligation to administer Toll-Free numbers in a competitively neutral manner.

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<sup>6</sup> 47 C.F.R. § 52.101(b) (defining “RespOrg” as “[t]he entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber”).

<sup>7</sup> See 47 C.F.R §§ 52.9, 52.101-52.111; SMS/800 Tariff §§ 2.3.1-2.3.7.

<sup>8</sup> SMS/800 Tariff § 2.3.1.

<sup>9</sup> *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 334 (D.C. Cir. 2006) (internal quotation marks omitted) (holding that retroactive effect of declaratory ruling was acceptable where the ruling was a new application of existing law, not a change in settled law).

Some commenters have suggested that although Commission action is or may be necessary to resolve this controversy, the Commission should act through notice-and-comment rulemaking rather than issuing a declaratory judgment.<sup>10</sup> But the fact that commenters may characterize the Petition as seeking “new rules”<sup>11</sup> that are “prospective and prescriptive”<sup>12</sup> does not mean that the controversy can only be resolved through rulemaking. On the contrary, “new rules” are often “adopted in the course of agency adjudication,”<sup>13</sup> and, so long as the Commission does not act to change an existing rule adopted pursuant to notice-and-comment rulemaking, “the Commission has very broad discretion to decide whether to proceed by adjudication or rulemaking.”<sup>14</sup> Given the Commission’s broad discretion, the fact that a given subject matter might be appropriate for additional rulemaking does not preclude a declaratory order that clarifies present regulatory requirements. The Commission can and should act on the Petition now to resolve immediate, existing problems and prevent them from growing any worse.

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<sup>10</sup> *E.g.*, Response of CenturyLink, at 2 (“CenturyLink Response”) (acknowledging that “there is clearly a ‘controversy’ within the industry” but arguing that a rulemaking is necessary as to the TSS registry portion of the declaratory relief).

<sup>11</sup> *E.g.*, Comments of CTIA, at 9 (“CTIA Comments”) (arguing that “[i]rrespective of the merits of Somos’s proposed requirements, there is no question that the Petition calls for the creation of new rules”).

<sup>12</sup> Zipwhip, Inc. Opposition to Petition for Declaratory Ruling, at 4 (“Zipwhip Opp.”).

<sup>13</sup> *Retail, Wholesale & Dep’t Store Union, AFL-CIO v. NLRB*, 466 F.2d 380, 388 (D.C. Cir. 1972) (discussing “recurring” problem of retroactive effect of “new rules” adopted through adjudication).

<sup>14</sup> *Conference Grp., LLC v. FCC*, 720 F.3d 957, 965 (D.C. Cir. 2013); *see also AT & T Inc. v. FCC*, 452 F.3d 830, 833 (D.C. Cir. 2006) (noting that the “substantial overlap” between a petition for declaratory ruling and proposed rulemaking did not preclude the Commission from ruling on the petition) (internal quotation marks omitted).

## **II. THE PETITION RELIES ON THE EXERCISE OF THE COMMISSION'S AUTHORITY OVER NUMBERING, NOT REGULATION OF TEXT MESSAGING AS A COMMON CARRIER SERVICE**

Contrary to the arguments of several commenters,<sup>15</sup> the Petition does not expressly or implicitly seek to impose Title II common-carrier regulations on text messaging. Granting relief in the form of the declaratory ruling that Somos seeks would not require or even implicate such regulation. Instead, the relief that the Petition seeks is narrowly tailored to protect the integrity and competitive neutrality of the Toll-Free numbering system.

“The 1934 Act, as amended, gives the Commission exclusive jurisdiction over ‘those portions of the North American Numbering Plan that pertain to the United States.’”<sup>16</sup> As discussed above and in the Petition, the Commission has exercised its jurisdiction over the allocation of Toll-Free numbers to create the current system, in which the Neutral Administrator and the Resp Orgs have defined responsibilities. In the Petition, Somos seeks a clarification of the rules and orders that the Commission has issued pursuant to its authority over numbering under 47 U.S.C. § 251(e) to “ensure the efficient, fair, and orderly allocation of toll free numbers.”<sup>17</sup>

The ruling sought would not affect text messaging generally, nor would it address the terms on which service providers can offer text-to-Toll-Free service to their customers. The minimal regulation at issue here would not have any effect at all on most text messaging, and would not expressly or implicitly regulate messaging service providers as common carriers. The ruling

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<sup>15</sup> See, e.g., Zipwhip Opp., at 4 (“[I]t is nonsensical to assert that the FCC’s regulation of telecommunications services is application to texting services.”); CTIA Comments, at 11 (“[T]he petition raises novel questions about the application of classic common carrier regulation to the routing of an information service.”).

<sup>16</sup> Second Report and Order, 12 FCC Rcd at 11164, ¶ 2 (quoting 47 U.S.C. § 251(e)).

<sup>17</sup> Order, *Toll Free Service Access Codes*, 28 FCC Rcd 15328, 15329, ¶ 4 (2013) (internal quotation marks omitted).



would merely require that, to the extent messaging service providers offer text messaging services to Toll-Free subscribers, they conform to the procedures already in place to safeguard the integrity of Toll-Free numbers. Those requirements have nothing to do with the regulatory status of the service that messaging providers offer to their customers.

### **III. THE REQUESTED RULING WOULD PROTECT SUBSCRIBERS AND CONSUMERS WHILE PROMOTING THE DEVELOPMENT OF THE MARKET FOR TEXT-ENABLED TOLL-FREE NUMBERS**

Commenters, including those opposed to the Petition, agree that the Toll-Free subscriber should have control over whether and how to text-enable its Toll-Free number.<sup>18</sup> To ensure that subscribers have control, messaging service providers must verify that a person requesting text-enablement of a Toll-Free number is in fact the number's subscriber. Only a Resp Org can definitively identify the subscriber to a Toll-Free number,<sup>19</sup> or, to the extent an entity (such as an agent) is between the Resp Org and the ultimate end user of a Toll-Free number, provide the necessary first link in the chain of identifying the entity with authority to control the number.<sup>20</sup> Any other method of verification is less than authoritative and ultimately gives the subscriber *less*

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<sup>18</sup> *E.g.*, Zipwhip Opp., at ii (“Zipwhip and the industry operate by the principle that the subscriber controls the use of its number . . .”).

<sup>19</sup> *See* 47 C.F.R. § 52.101(b) (defining Resp Org as “[t]he entity chosen by a toll free subscriber to manage and administer the appropriate records” in the SMS/800 database); *id.* § 52.101(e) (defining subscriber as “[t]he entity that requests a Responsible Organization to reserve a toll free number” from the SMS/800 database); *see also* SMS/800 Tariff § 2.3 (“The Resp Org is the entity identified by the toll-free subscriber or the subscriber's agent that manages and administers the appropriate records in the SMS/800. Functions provided include data entry, record change and trouble acceptance, referral, and/or clearance.”).

<sup>20</sup> *See, e.g.*, CenturyLink Response, at 4 (explaining possible issues arising from multiple-entity chains, and stating that “[t]he *only* way to avoid this kind of confusion and harm to the actual toll-free number holder is to require the consent for the text enablement to come through the Resp Org”).

control over the number, since it allows for the possibility that a Toll-Free number could be text-enabled without the subscriber's knowledge – in effect, hijacked.

Use of the TSS Registry will not only provide a mechanism to ensure Resp Org authorization is accomplished in a reliable and efficient manner, but it will also ensure that only assigned numbers are text-enabled – avoiding the risk that an unassigned number would be text-enabled, effectively making that number unavailable for legitimate use. To be effective, the registry must be linked to the SMS/800 database and available on an equal basis to all Resp Orgs and messaging providers. Otherwise, Resp Orgs or messaging service providers cannot be sure that the database will accurately reflect the status of Toll-Free numbers even as they change messaging service providers, Resp Orgs, and subscribers. The only means of verifying all requests, while enforcing other rules applicable to the administration of Toll-Free numbers, is to require use of the TSS Registry.

The Petition obviously does not seek authorization by Resp Orgs *instead of* by subscribers, as one commenter suggested.<sup>21</sup> Rather, the Resp Org merely affirms, after a request for text-enablement, that the requesting party is in fact authorized to do so.<sup>22</sup> By contrast, without authorization by Resp Orgs through the TSS Registry, text-enablement of Toll-Free numbers without their subscribers' knowledge will continue. Various commenters have attested to this problem:

- “A number of RespOrgs have found that many of the toll-free numbers that they manage were TTF enabled without their knowledge.”<sup>23</sup>

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<sup>21</sup> See Zipwhip Opp., at i.

<sup>22</sup> See Comments in Support, Association of Toll Free Professionals, at 1 (“ATFP Comments”).

<sup>23</sup> Comments in Support of Somos, Inc. Petition, Joint Commenters Bandwidth.com, Inc. and West Telecom Services, LLC, at 7 (“Joint Commenters Bandwidth.com et al.”).

- “CSF Corporation[] and our customers have been victimized by this toll-free text ‘number hijacking’ which can be easily resolved by requiring a neutral third party registry.”<sup>24</sup>
- “We have had toll free numbers that belong to our RESPORG/Company that have been text enabled without our knowledge or authorization. Example – **one of our own Company toll free numbers** became Text Enabled without our authorization.”<sup>25</sup>
- “We have had dozens and dozens of situations where the numbers that we manage on our Resp Org were text enabled without [our] knowledge or authorization and without the knowledge or authorization from our customer of record.”<sup>26</sup>
- “[R]outing errors have become all too common for 8XX messages . . . .”<sup>27</sup>

Not only are subscribers losing control of their Toll-Free numbers, but consumers are vulnerable. As CTIA points out in its comments, “surveyed consumers believe wireless messaging is a trusted communications medium,” and surveyed voters say that “text messaging is among the most secure form of communications for transmitting personal or financial information.”<sup>28</sup> That is precisely why there is serious potential for harm to consumers from the hijacking of trusted Toll-Free numbers.<sup>29</sup> Furthermore, if fraud becomes widespread, consumers will lose their confidence in text messaging.<sup>30</sup> Consumers should be able to rely on the fact that text messaging that appears to come from a Toll-Free subscriber actually does.

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<sup>24</sup> Comments of CSF Corporation in Support, at 3.

<sup>25</sup> Comments by ANI Networks (emphasis added).

<sup>26</sup> Comments in Support, ATL Communications, at 2.

<sup>27</sup> Joint Comments of Aerialink Inc., CallFire, Inc., and Twilio Inc. in Support of Somos, Inc.’s Petition for Declaratory Rulemaking, at 2 (“Joint Comments of Aerialink et al.”).

<sup>28</sup> CTIA Comments, at 4 & n.11 (internal quotation marks omitted).

<sup>29</sup> As several commenters point out, the use of text messaging by banks is a perfect example of the potential for abuse. *See* Joint Commenters Bandwidth.com et al., at 8-9; ATFP Comments, at 2.

<sup>30</sup> *See, e.g.*, Joint Comments of Aerialink et al., at 2 (“If consumers or businesses lose faith in messaging . . . then the sector and potentially the industry will suffer.”).

Similarly, law enforcement relies on the fact that the SMS/800 database and Resp Orgs are the definitive source of Toll-Free information. When seeking information about a particular Toll-Free number, law enforcement serves subpoenas on Somos, and in turn the Resp Orgs (and so on down the chain, if necessary) to identify the end-user. That is effective for identifying the subscriber or other end-user for voice call purposes and for obtaining information about voice traffic. Without the ruling that Somos seeks, however, there is a potential gap with respect to text messaging. The verification problems discussed above create the possibility that a Resp Org would be unable to identify the source of text messaging traffic on a Toll-Free number for law enforcement purposes.

Even if there is a dispute about the extent of the abuses to date, there should be no dispute that the present system creates the potential for fraud, abuse, and error. Given the evidence before the Commission, there is every reason to act now to forestall further problems. And while Somos has consistently worked with the industry to address this issue, those efforts have not been effective. Indeed, after the industry developed guidelines outlining a solution very much like the proposal in Somos's Petition, those guidelines were not followed.<sup>31</sup> Since self-regulation has proven ineffective, action by the Commission is called for.<sup>32</sup>

#### **IV. NEITHER RESP ORGS NOR SOMOS WILL GAIN ANY INAPPROPRIATE ADVANTAGE FROM THE PROPOSED RULINGS**

There is no merit to the argument that Resp Orgs might use their role in verification to gain any unfair competitive advantage. As the SMS/800 Tariff and the regulations make clear, the Resp

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<sup>31</sup> See White Paper, *Texting with Toll-Free Numbers*, Exhibit to Letter from Joel Bernstein, Somos, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-7 & CC Docket No. 95-155, at 10-12 (Sept. 29, 2016).

<sup>32</sup> See *id.* at 11.

Org is the subscriber's agent and must act on the subscriber's behalf.<sup>33</sup> A Resp Org is prohibited from leveraging its position of access to the SMS/800 database into an unfair competitive advantage in the text-to-Toll-Free market. The Resp Orgs are also subject to industry guidelines promulgated by the Alliance for Telecommunications Industry Solutions ("ATIS") that deal specifically with text-enablement. Under ATIS's Industry Standards for Toll Free Number Administration, Resp Orgs are limited to "reject[ing text enablement] requests for legitimate business reasons."<sup>34</sup> Moreover, subscribers may avoid any delay in the authorization process by "provid[ing] advance instructions to their Resp Org with respect to authorization of text-enablement."<sup>35</sup>

The insinuation that Somos's Petition is motivated by the prospect of making a profit from the TSS Registry is also unfounded. Somos is a not-for-profit corporation, and any charges for TSS Registry services will be tariffed and set at cost-based rates. Moreover, unlike commenting parties who have an incentive to use registration to gain a competitive advantage in related communications services markets, Somos has been designated by the Commission as the Neutral Administrator of the Toll-Free number system and, as a result, must avoid having industry affiliations or interests in numbering that could jeopardize its neutral status.<sup>36</sup>

To be clear, the Petition does not seek to resolve the concerns about market failure expressed in some of the filed comments; nor is the Petition intended to reshape the text-to-Toll-

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<sup>33</sup> *E.g.*, 47 C.F.R. § 52.101(b); *see also* Alliance for Telecommunications Industry Solutions, Industry Guidelines for Toll-Free Number Administration, ATIS-041700-002, at 2 (Oct. 2016) ("ATIS Guidelines") ("The Resp Org is responsible to its Customer for management of the SMS/800 record.").

<sup>34</sup> ATIS Guidelines, at 6.

<sup>35</sup> *Id.*

<sup>36</sup> *See* Order, *Toll Free Service Access Codes*, 28 FCC Rcd at 15343, ¶¶ 39-41 (evaluating neutrality and finding Somos neutral under its proposed plan).


Free market. The Petition does not take any position on interconnection or aggregation arrangements among carriers and service providers. It seeks only to establish that certain ground rules, already in place to protect the numbering system from potential abuses, apply to this new technology as well.

### CONCLUSION

For the reasons set forth above, the Commission should grant the Petition.

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